

§ 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in §180.970, are covered transactions unless listed in the exemptions under § 180.215.

§ 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
 - (1) A foreign government or foreign governmental entity;
 - (2) A public international organization;
 - (3) An entity owned (in whole or in part) or controlled by a foreign government; or
 - (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
- (b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.
- (c) Federal employment.
- (d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.
- (e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.
- (f) An incidental benefit that results from ordinary governmental operations.
- (g) Any other transaction if—
 - (1) The application of an exclusion to the transaction is prohibited by law; or
 - (2) A Federal agency's regulation exempts it from coverage under this part.
- (h) Notwithstanding paragraph (a) of this section, covered transactions must

include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States. Federal awarding agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in the System for Award Management Exclusions List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements or commitments with the United States, pursuant to section 1290 of the National Defense Authorization Act for Fiscal Year 2017, unless the head of a Federal agency grants an exception pursuant to 2 CFR 180.135 with the concurrence of the OMB Director.

[70 FR 51865, Aug. 31, 2005, as amended at 83 FR 31038, July 3, 2018]

§ 180.220 Are any procurement contracts included as covered transactions?

- (a) Covered transactions under this part—
 - (1) Do not include any procurement contracts awarded directly by a Federal agency; but
 - (2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.
- (b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:
 - (1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210, and the amount of the contract is expected to equal or exceed \$25,000.
 - (2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.